IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

---

CIVIL SECOND APPEAL No. 31 of 2006

JORA RAM & ORS.
V/S
BHOORA RAM & ANR.

Mr. CR JAKHAR, for the appellant / petitioner

Date of Order : 25.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by the learned counsel for the appellant that the learned lower Appellate court has gone on irrelevant considerations about non-impleadment of Gram Panchayat, and that the land in question is covered by his Patta though that Patta has been cancelled but then the defendant has no title over the land, and the land being in possession of the appellant, the defendant cannot be allowed to encroach upon it, and thus the dismissal of the suit is bad.

I have considered the submissions, in my view, the learned trial court has discussed the matter on merits by discussing the evidence of the parties, and has decided the issue no. 1 against the plaintiff which comprehended the question as to whether the defendants have included the

disputed portion of the land measuring 15 x 100 ft. into their 'Bara', and has considered that the plaintiff got two Pattas, and the subsequent Patta relates to much larger portion of the land, and therfore, it has been found that the subsequent Patta is doubtful. That apart it has been noticed that in the suit the plaintiff has neither given the boundary, nor measurements, nor the plaintiffs' witnesses have given the measurements of the plaintiffs' land, and it has also been found that according to the plaintiffs' witnesses, towards the North on the plaintiffs' Bara is foot-way, while the plaintiff wants to claim his land after leaving 20 ft. wide portion of the land towards the North. In this background, it has also been found that independent witness P.W.6 LaKha Ram has has deposed that fencing which is existing at present is old one, and at the same place where it was. Thus, it is not proved that the defendants have shifted fencing so as to encroach upon plaintiffs' land. It is in this sequence that the learned trial court has found that the plaintiff has failed to prove any encroachment, and has thus dismissed the suit.

So far the learned lower Appellate Court is concerned, of course, the learned lower Appellate Court has referred to the requirement of impleadment of Gram Panchayat also but then at the same time, the learned lower Appellate Court has also found that the subsequent Patta has already been cancelled on 11.6.1999 having been granted

in violations of provisions of Rule 266, and the plaintiff only wants to protect the land covered by subsequent Patta which has been cancelled. That apart, learned lower Appellate Court has positively found that the plaintiff has totally failed to establish from his evidence as to when and how the defendants have encroached upon his 15 x 100 ft. portion of land. Thus, the finding of the learned trial court on issues no. 1 and 2 have been upheld.

In my view, irrespective of the question as to whether Gram Panchayat was required to be impleaded as party or not, on my request the learned counsel read to me the statement of P.W.6. P.W.6 was examined by the plaintiffs themselves, and after reading his statement it is clear that the fencing as it exists is the old one. Obviously, therefore, it has rightly been disbelieved by the learned trial court that the defendants have shifted the fencing, and have thereby encroached upon the plaintiffs land to the extent claimed by the plaintiffs.

Thus, I do not find any error in the findings. The appeal thus does not involve any substantial question of law. The appeal has no force, and the same is dismissed summarily.

( N P GUPTA ),J.

/Sushil/